

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This cause is before the Court on plaintiff's appeal of an adverse ruling of the Social Security Administration. All pretrial matters were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) for appropriate disposition.

Presently pending before the Court is plaintiff's Motion for Dismissal Without Prejudice (filed August 9, 2005/Docket No. 9) in which plaintiff avers that a decision of the Social Security Administration rendered subsequent to the filing of this cause of action, renders this action moot. In the instant cause of action, plaintiff challenges the final decision of the Commissioner as rendered by an Administrative Law Judge on February 23, 2004, in which it was determined that plaintiff was under a disability, but that such disability ceased July 11, 2003. In the instant Motion

to Dismiss, plaintiff contends that upon consideration of a second application for benefits, the Social Security Administration determined to reopen the previous application, subject of the instant appeal, and found plaintiff to be under a disability on and subsequent to July 12, 2003. (See Pltf.'s Mot. Dismiss, Exh. A.) With such a finding of disability, plaintiff avers that her instant appeal of the Commissioner's previous denial of benefits subsequent to July 11, 2003, is now moot.

The Commissioner has not responded or otherwise objected to plaintiff's motion and the time for doing so has passed.

Accordingly, upon consideration of the averments made in plaintiff's instant motion, and upon review of the fully favorable decision of the Social Security Administration rendered July 20, 2005,

IT IS HEREBY RECOMMENDED that plaintiff Carolyn A. Spicer's Motion for Dismissal Without Prejudice (Docket No. 9) be granted.

IT IS FURTHER RECOMMENDED that plaintiff Carolyn A. Spicer's appeal of the Commissioner's final decision as rendered by an Administrative Law Judge on February 23, 2004, be dismissed without prejudice.

The parties are advised that they have eleven days in which to file written objections to this Report and Recommendation. Failure to timely file objections may result in waiver of the right

to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).



UNITED STATES MAGISTRATE JUDGE

Dated this 24th day of August, 2005.